



# California Fair Political Practices Commission

June 29, 1989

Thomas Martin  
Administrative Assistant  
to Senator Robert G. Beverly  
1611 South Pacific Coast Highway, Room 102  
Redondo Beach, CA 90277

Re: Your Request for Advice  
Our File No. A-89-301

Dear Mr. Martin:

This is in response to your letter requesting advice on behalf of the 51st Assembly District Republican Central Committee and Senator Robert G. Beverly regarding the newly enacted provisions of the Political Reform Act (the "Act").<sup>1/</sup>

Please be aware that the issues raised in this letter present significant policy questions. Because the Commission may adopt regulations in the near future that could alter the advice given in this letter, we have provided a conservative and cautious interpretation of the Act.

## QUESTIONS

1. May a county central committee set up an account for purposes other than contributions to candidates for elected office, contributions to which will not be subject to the contribution limits of the Act?

2. May an officeholder pay campaign funds to county central committees as bounty for voter registration if the payments are earmarked for the noncontribution account of the central committee?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### CONCLUSIONS

1. The Act does not impose limits on the amount of contributions made to a county central committee if they are for a purpose "other than making contributions directly to candidates for elective office." Therefore, a county central committee may establish an account to receive such contributions and there is no limit to the amount they may receive. However, the Commission has not yet defined what constitutes a "purpose other than making contributions directly to candidates for elective office."

2. A candidate for elected office may use campaign funds to pay bounty to county central committees for voter registration activities if the transaction constitutes an exchange of adequate consideration. These payments must be made from the candidate's campaign bank account for a future candidacy.

### FACTS

Proposition 73, approved by the voters in June of 1988, established a comprehensive system of campaign regulation and contribution limitations. The Proposition 73 amendments to the Act provide that contributions to candidates for elective office must comply with the contribution limits set forth in Sections 85301, 85303 and 85305. Contributions to committees are governed by Sections 85302 and 85303.

County central committees are in a unique position with respect to the contribution limits of the Act. On the one hand, county central committees, under the general direction of the state central committee, have charge of the party campaign. (Elections Code Sections 8940, 9440, 9740, 9850.) Thus, the county central committees are an integral part of the state political party structure. On the other hand, the county central committees generally act separately from the state central committee and are therefore functionally independent political committees.

One service the county central committees provide to candidates is the registration of voters. Candidates have generally rewarded the county central committees by paying a cash bounty for each voter registered that is of the candidate's political party. Bounty income is one way the county central committees raise funds to pay operating expenses.

### ANALYSIS

#### County Central Committees

Proposition 73 groups entities that receive and make contributions to candidates into three classifications: political committees, broad-based political committees and political parties. "Political committee" is defined as a committee of persons

who receive contributions from two or more persons and acting in concert makes contributions to candidates. (Section 85102(c).) A "broad based political committee" is defined as a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons, and acting in concert makes contributions to five or more candidates. (Section 85102(d).) However, "political party" was not defined in Proposition 73.

Proposition 73 does specifically distinguish political parties from candidate controlled committees and political committees for the purposes of the Act. (Section 85302; Section 85303(b).) However, county central committees were not specifically addressed by Proposition 73. Further, the Commission has not yet reached a conclusion as to whether county central committees are subunits of the political party and subject to a combined aggregate contribution limit, or are instead political committees or broad based political committees. Because the status of county central committees may be clarified by Commission regulation in the future, in answering your questions we do not reach a conclusion as to whether county central committees are subunits of the political party for purposes of Proposition 73's contribution limits.

#### The Noncontribution Account

Section 85302 specifies limits on contributions to political parties, political committees and broad based political committees. Section 85302 provides:

No person shall make and no political committee, broad based political committee, or political party shall solicit or accept, any contribution or loan from a person which would cause the total amount contributed or loaned by that person to the same political committee, broad based political committee, or political party to exceed two thousand five hundred dollars (\$2,500) in any fiscal year to make contributions to candidates for elective office.

(Emphasis added.)

In addition, Section 85303(c) provides:

Nothing in this Chapter shall limit a person's ability to provide financial or other support to one or more political committees or broad based political committees provided the support is used for purposes other than making contributions directly to candidates for elective office.

We interpret these two sections, when read together, to permit contributions to political committees, broad based political committees and political parties that are not subject to

the contribution limits of the Act, provided the contributions are not for the purpose of making contributions to candidates for elective office. (Section 85302.) Thus, we conclude there are no limits on contributions to political committees, broad based political committees or political parties provided the contributions are "for purposes other than making contributions directly to candidates for elective office."

A more difficult problem is delineating exactly for what the noncontribution account may be used without becoming subject to the contribution limits of the Act. (Section 85302.) The Commission has not yet defined the phrase "for purposes other than making contributions directly to candidates for elective office." Clearly the exception does not apply to contributions given by committees or political parties to a candidate, whether in-kind or monetary.

Section 82015 defines contribution as follows:

"Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

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Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

On the other hand, funds raised for overhead expenses, such as rent, utilities, etc. appear to be exempt from the contribution limits, if not provided to the candidate as an in-kind contribution. You have asked specifically about using the funds for voter registration and information activity, and rent, telephone, utilities and postage expenses. The county central committee's noncontribution account may be used for these purposes provided the expenditures do not have the effect of directly benefiting a candidate for elected office.

Bounty

Generally the appropriate use of campaign funds is controlled by the "personal use" statute (Chapter 5, commencing with Section 12400 of Division 9 of the Elections Code) and is administered by the Attorney General's Office. However, Proposition 73 enacted additional restrictions on the use of campaign funds that have been incorporated into the Act. (Section 85202(b); Section 85304; Section 85306.)

Section 85202(b) provides that:

All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate to the specific office for which the candidate has stated, pursuant to Section 85200, that he or she intends to seek or expenses associated with holding that office.

Section 85304 also provides a restriction on the use of campaign funds. Section 85304 states:

No candidate for elective office or committee controlled by that candidate or candidates for elective office shall transfer any contribution to any other candidate for elective office. Transfers of funds between candidates or their controlled committees are prohibited.

You have asked whether a candidate can pay campaign funds to a county central committee as "bounty" for voter registration. Section 85202(b) permits the use of campaign funds to pay for expenses associated with the election of the candidate to the office for which the candidate raised the funds or for expenses associated with holding that office. By paying the bounty as incentive to the county central committee to register more voters of the candidate's party, the candidate is using the campaign funds to increase the chances of his success in the future election. In this circumstance, the Commission has determined that candidate's payment of bounty for registering voters is a campaign-related expenditure. (Regulation 18525(a)(4), copy enclosed.) Accordingly, the candidate is required to use his or her campaign bank account for a future candidacy to make these payments. If the amount of bounty paid constitutes adequate consideration for the registration services rendered by the county central committee, the candidate will not have made a contribution to the committee. (Section 82015.)

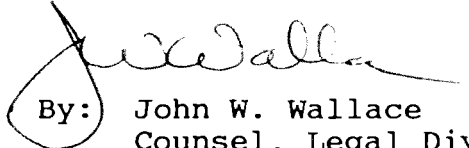
Section 85304 prohibits transfers of funds between candidates or their controlled committees.<sup>2/</sup> However, where the use of campaign funds is valid under Section 85202(b), it will not be prohibited by Section 85304 unless the transfer is to another candidate controlled committee or to a noncontrolled committee which will utilize the funds in making contributions to other candidates. Thus, the prohibition against transfers between candidates would not apply to these facts.<sup>3/</sup>

Therefore, candidates for elected office may use campaign funds to pay bounty to county central committees if the transaction is supported by adequate consideration. The payments are treated as campaign expenditures by the candidate and income to the county central committee for the provision of voter registration services.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

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Enclosure

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<sup>2/</sup> In Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission (United States District Court, Eastern District of California, Case No. CIVS-89-0433, LKK-JFM), the court issued a preliminary injunction prohibiting enforcement of Section 85304 to limit a candidate's ability to transfer campaign contributions among the candidate's controlled committees.

<sup>3/</sup> Of course this does not mean that the Act permits unrestricted transfers of campaign funds to political committees. While Section 85304 would not limit the transfers discussed in this letter, other transfers to political committees or political parties may still violate either the trust provision of the Act or the personal use statute as administered by the Attorney General's Office. (Elections Code Section 12400, et seq.)

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# California State Senate

**ROBERT G. BEVERLY**  
SENATOR  
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1611 SO. PACIFIC COAST HWY.  
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REDONDO BEACH 90277  
(310) 540-1611

638 BEACON STREET  
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(213) 548-0651

May 15, 1989

Mr. John Wallace  
Legal Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, California 95814

Dear Mr. Wallace:

Pursuant to our telephone conversation, our office has been contacted by officials from the 51st Assembly District Republican Central Committee seeking clarification on two Proposition 73 related issues. We would appreciate a formal opinion.

The Central Committee has maintained a year-round headquarters for more than two decades. One of the past on-going revenue sources used in the General Fund (which pays for rent, telephone, utilities, postage, voter information and registration) has been "bounty" revenue paid by the County Republican Party and local State officeholders for each new Republican registered to vote in the district.

Questions:

1. Can officeholders continue to offer this "bounty" out of their campaign funds if the Central Committee sets up a separate account used only for non-partisan registration activities? Since volunteers register any adult from any political party, the intent of the account would be to pay for the direct costs involved with voter registration.

Mr. John Wallace

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2. What guidelines or restrictions would there be for this account? Can it also be used to pay for non-partisan education materials requested by students, postage, a telephone used to provide such information and other such similar activities?

Your assistance in addressing these questions would be appreciated.

Sincerely,



THOMAS R. MARTIN  
Administrative Assistant

TRM:sks



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Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas R. Martin".

THOMAS R. MARTIN  
Administrative Assistant

TRM:sks



# California Fair Political Practices Commission

May 23, 1989

Thomas Martin  
Administrative Assistant to  
Senator Robert G. Beverly  
State Capitol, Room 2054  
Sacramento, CA 95814

Re: Letter No. 89-301

Dear Mr. Martin:

Your letter requesting advice under the Political Reform Act was received on May 18, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh